

## ***Biological Survey and Endangered Species Law***

Obtaining landowner permission to survey is an integral part of biological inventory in the 1990's. Occasionally, however, permission to survey on private lands is denied due to a mistaken belief that if a rare species is discovered, restrictions and land-use limitations will be imposed. Clearly, when this occurs the search for scientific information is hindered. A secondary effect of denial to survey is that owners of lands that are biologically significant do not learn more about what they own or about the conservation options and tax incentives that would be available to them. Those who grant permission and are found to own significant lands are given results from the biological survey and, if they wish, they are put in contact with an appropriate conservation organization. A list of current organizations who should be consulted by a landowner interested in conservation options is found in Appendix 3.

In reality, there is no reason for landowners to have concerns about the presence of rare species on their land. A summarization of federal and state endangered species laws relevant for private landowners is listed below. It is hoped that the information presented below will help dispel concerns landowners may have about rare species and to provide clarification on potential land-use restrictions.

Regarding federal law:

1. The Endangered Species Act (ESA) applies only to plants and animals that are federally listed as Endangered or Threatened. Since federally listed species are very rare, the likelihood of their occurring on private land is very low.
2. The ESA does protect species from the potentially harmful actions of private landowners, but it also offers flexible tools for resolving conflicts. Engaging in trade in a federally listed species without a permit is illegal for both plants and animals. "Taking" (i.e., harassing, harming, pursuing, hunting, killing, or trapping) or illegally possessing listed animals is illegal. Removing, digging up, cutting, damaging, or destroying a listed plant on an other's land in knowing violation of the law is illegal.
3. Private citizens can lawfully "take" listed species if it is "incidental to and not the purpose of carrying out otherwise lawful activities" as long as the landowner implements a conservation plan for the species.
4. Under the ESA, private developers can obtain permits to legally harm or even kill federally listed species on their property provided that they show that attempts were made to minimize their impact on the species in other ways.
5. The existence of a federally listed species on private property legally has no effect on the landowner unless a project requiring a federal permit is planned, or uses federal funds, or that will